

Assembly Bill No. 1678

CHAPTER 633

An act to amend Sections 8281, 8282, 8283, 8284, 8285, and 8286 of, and to amend the heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 26, 2014. Filed with
Secretary of State September 26, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1678, Gordon. Women, minority, disabled veteran, and LGBT business enterprise procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, water, and telephone corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature.

Existing law directs the commission to require every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with annual gross revenues exceeding \$25,000,000, and their regulated subsidiaries and affiliates, to implement a program developed by the commission to encourage, recruit, and utilize minority-, women-, and disabled veteran-owned business enterprises, as defined, in the procurement of contracts from those corporations or from their regulated subsidiaries and affiliates, and to require the reporting of certain information. The commission, by its rulemaking authority, has adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements. Existing law includes the declaration by the Legislature that each electrical, gas, water, mobile telephony service provider, and telephone corporation that is not required to submit a plan, and each cable television corporation and direct broadcast satellite provider, is encouraged to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories. Existing law requires the commission, by rule or order, to adopt criteria for verifying and determining eligibility of women and minority business enterprises for procurement contracts. Existing law requires the commission to provide to the Legislature a specified report on the progress of activities undertaken by certain entities in the implementation of women, minority, and disabled business enterprise development programs. Existing law requires the commission to recommend a program and legislation for carrying out the policy of aiding the interests of women, minority, and disabled veteran business enterprises.

This bill would extend these provisions to LGBT business enterprises, as defined. In initially adopting criteria for verifying and determining the eligibility of LGBT business enterprises for procurement contracts, the bill would require the commission to adopt the LGBT status qualifiers created by the National Gay and Lesbian Chamber of Commerce. The bill would authorize the commission to update the LGBT status qualifiers as appropriate.

(2) This bill would incorporate additional changes in Section 8282 of the Public Utilities Code, proposed by AB 2760, to be operative only if AB 2760 and this bill are chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

(3) Under existing law, a violation of any provision of any rules or orders of the commission is a crime. In addition, any person or corporation who falsely represents a business as a women, minority, or disabled veteran business enterprise for the purposes of the program discussed above is subject to criminal penalties.

This bill would also subject any person or corporation who falsely represents a business as an LGBT business enterprise for the purposes of the program discussed above to criminal penalties. Because a violation of the requirements of the bill would be a crime under those provisions, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of the Public Utilities Code is amended to read:

Article 5. Women, Minority, Disabled Veteran, and LGBT Business Enterprises

SEC. 2. Section 8281 of the Public Utilities Code is amended to read:

8281. (a) The Legislature hereby finds and declares that the essence of the American economic system of private enterprise is free, open, and transparent competition. Only through free, open, and transparent competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be ensured. The preservation and expansion of that competition are basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed. Therefore, it is the declared policy

of the state to aid the interests of women, minority, disabled veteran, and LGBT business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, are awarded to women, minority, disabled veteran, and LGBT business enterprises, and to maintain and strengthen the overall economy of the state.

(b) (1) The Legislature finds all of the following:

(A) The opportunity for full participation in our free enterprise system by women, minority, disabled veteran, and LGBT business enterprises is essential if this state is to attain social and economic equality for those businesses and improve the functioning of the state economy.

(B) Public agencies and some regulated utilities that have established short- and long-range women, minority, disabled veteran, and LGBT business enterprise goals are awarding 30 percent or more of their contracts to these business enterprises.

(C) Women, minority, disabled veteran, and LGBT business enterprises have traditionally received less than a proportionate share of regulated public utility procurement contracts, especially in renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

(D) It is in the state's interest to expeditiously improve the economically disadvantaged position of women, minority, disabled veteran, and LGBT business enterprises.

(E) The position of these businesses can be substantially improved by providing long-range substantial goals for procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work, especially in renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, from women, minority, disabled veteran, and LGBT businesses.

(F) That procurement also benefits the regulated public utilities and consumers of the state by encouraging the expansion of the number of suppliers for procurements, thereby encouraging competition among the suppliers and promoting economic efficiency in the process.

(G) That the long-term economic viability of this state depends substantially upon the ability of renewable energy, wireless telecommunications, broadband, smart grid, and rail projects to incorporate women, minority, disabled veteran, and LGBT businesses into those projects.

(2) It is the purpose of this article to do all of the following:

(A) Encourage greater economic opportunity for women, minority, disabled veteran, and LGBT business enterprises.

(B) Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electrical, gas, water, wireless telecommunications service provider, and telephone corporation contracts and contracts of their commission-regulated subsidiaries and affiliates.

(C) Clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women, minority, disabled veteran, and LGBT business enterprises.

SEC. 3. Section 8282 of the Public Utilities Code is amended to read:

8282. For the purposes of this article, the following definitions apply:

(a) “Women business enterprise” means a business enterprise that is at least 51 percent owned by a woman or women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of those individuals.

(b) “Minority business enterprise” means a business enterprise that is at least 51 percent owned by a minority group or groups; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

(c) “Disabled veteran business enterprise” has the same meaning as defined in Section 999 of the Military and Veterans Code.

(d) “LGBT business enterprise” means a business enterprise that is at least 51 percent owned by a lesbian, gay, bisexual, or transgender person or persons; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and whose management and daily business operations are controlled by one or more of those individuals.

(e) “Control” means exercising the power to make policy decisions.

(f) To “operate” means to be actively involved in the day-to-day management. It is not enough to merely be an officer or director.

SEC. 3.5. Section 8282 of the Public Utilities Code is amended to read:

8282. For the purposes of this article, the following definitions apply:

(a) “Women business enterprise” means a business enterprise that is at least 51 percent owned by a woman or women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of those individuals.

(b) “Minority business enterprise” means a business enterprise that is at least 51 percent owned by a minority group or groups; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

(c) “Disabled veteran business enterprise” has the same meaning as defined in Section 999 of the Military and Veterans Code.

(d) “LGBT business enterprise” means a business enterprise that is at least 51 percent owned by a lesbian, gay, bisexual, or transgender person

or persons; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and whose management and daily business operations are controlled by one or more of those individuals.

(e) “Control” means exercising the power to make policy decisions.

(f) To “operate” means to be actively involved in the day-to-day management. It is not enough to merely be an officer or director.

(g) “Renewable energy project” means a project for the development and operation of an eligible renewable energy resource meeting the requirements of the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1).

SEC. 4. Section 8283 of the Public Utilities Code is amended to read:

8283. (a) The commission shall require each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates, to submit annually, a detailed and verifiable plan for increasing procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

(b) These annual plans shall include short- and long-term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage women, minority, disabled veteran, and LGBT business enterprises in subcontracts in all categories that provide subcontracting opportunities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

(c) The commission shall establish guidelines for all electrical, gas, water, wireless telecommunications service providers, and telephone corporations with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates, to be utilized in establishing programs pursuant to this article.

(d) Every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) shall furnish an annual report to the commission regarding the implementation of programs established pursuant to this article in a form that the commission shall require, and at the time that the commission shall annually designate. The report shall include the information about LGBT business enterprises beginning with the 2016 report.

(e) (1) The commission shall provide a report to the Legislature on September 1 of each year, on the progress of activities undertaken by each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) pursuant to this article in the implementation of women, minority, disabled veteran, and LGBT business enterprise development programs. The report shall include information about which

procurements are made with women, minority, disabled veteran, and LGBT business enterprises with at least a majority of the enterprise's workforce in California, to the extent that information is readily accessible. The commission shall recommend a program for carrying out the policy declared in this article, together with recommendations for legislation that it deems necessary or desirable to further that policy. The commission shall make the report available on its Internet Web site.

(2) In regard to disabled veteran business enterprises, the commission shall ensure that the programs and legislation recommended pursuant to paragraph (1) are consistent with the disabled veteran business enterprise certification eligibility requirements imposed by the Department of General Services and that the recommendations include only those disabled veteran business enterprises certified by the Department of General Services.

(3) The commission shall include the information about LGBT business enterprises required by paragraph (1) beginning with the report due on September 1, 2016.

(f) (1) The Legislature declares that each electrical, gas, water, mobile telephony service provider, and telephone corporation that is not required to submit a plan pursuant to subdivision (a) is encouraged to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement in all categories.

(2) The Legislature declares that each cable television corporation and direct broadcast satellite provider is encouraged to voluntarily adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis.

SEC. 5. Section 8284 of the Public Utilities Code is amended to read:

8284. (a) (1) The commission shall, by rule or order, adopt criteria for verifying and determining the eligibility of women, minority, and LGBT business enterprises for procurement contracts.

(2) The commission shall adopt the Department of General Services' disabled veteran business enterprise certification eligibility requirements for verifying and determining the eligibility of disabled veteran business enterprises for procurement contracts, and shall not deem eligible those disabled veteran business enterprises that are not certified by the Department of General Services.

(3) In initially adopting criteria for verifying and determining the eligibility of LGBT business enterprises for procurement contracts pursuant to paragraph (1), the commission shall adopt the LGBT status qualifiers created by the National Gay and Lesbian Chamber of Commerce. The commission may update these LGBT status qualifiers as appropriate.

(b) The commission shall develop, and require every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates to implement, an outreach program to inform and recruit women, minority,

disabled veteran, and LGBT business enterprises to apply for procurement contracts under this article.

SEC. 6. Section 8285 of the Public Utilities Code is amended to read:

8285. (a) Any person or corporation, through its directors, officers, or agents, which falsely represents a business as a women, minority, or LGBT business enterprise in the procurement of, or the attempt to procure, contracts from an electrical, gas, water, wireless telecommunications service provider, or telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000), or a commission-regulated subsidiary or affiliate subject to this article, shall be punished by a fine of not more than five thousand dollars (\$5,000), by imprisonment in a county jail for not more than one year or in the state prison, or by both that fine and imprisonment. In the case of a corporation, the fine or imprisonment, or both, shall be imposed on every director, officer, or agent responsible for the false statements.

(b) Any person or corporation, through its directors, officers, or agents, which falsely represents a business as a disabled veteran business enterprise in the procurement of, or the attempt to procure, contracts from an electrical, gas, water, wireless telecommunications service provider, or telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000), or a commission-regulated subsidiary or affiliate subject to this article, shall be punished according to the penalties established pursuant to subdivision (b) of Section 999.9 of the Military and Veterans Code. In the case of a corporation, the fine or imprisonment, or both, shall be imposed on every director, officer, or agent responsible for the false statements.

SEC. 7. Section 8286 of the Public Utilities Code is amended to read:

8286. (a) In order to facilitate the participation of women-owned businesses, minority-owned businesses, disabled veteran-owned businesses, and LGBT-owned businesses and small businesses in contract procurement, any corporation subject to this article may consider the following measures to include those businesses in all phases of their contracting:

- (1) Timely or progressive payments to those businesses.
- (2) An amendment of the performance bond requirements so that bond requirements of electrical, gas, and telephone corporations do not prohibitively burden those businesses from procuring the corporation's business.
- (3) The provision of assistance to those businesses by securing contract payments to those businesses with letters of credit, negotiable securities, or other financing arrangements or measures.

(b) This section does not restrict a corporation's ability to require a bond.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 8282 of the Public Utilities Code proposed by both this bill and Assembly Bill 2760. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 8282 of the Public Utilities Code, and (3) this bill is enacted after Assembly Bill 2760, in which case Section 3 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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